



Enforcement Process

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Objectives

- **Discuss the steps in the enforcement process**
- **Identify PAAA Coordinator roles and responsibilities associated with the process**
- **Distinguish between the Price-Anderson Nuclear Safety Program and the Price-Anderson Worker Safety & Health Program**

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Steps of the Enforcement Process

- **Evaluations and investigations of potential rule violations**
- **Informal enforcement conference**
- **Post-conference DOE meeting**
- **Enforcement outcome**
- **Enforcement Action monitoring/closure**

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Evaluation and Investigation of Potential Rule Violations

- **OE reviews various sources (internal and external) to identify potential noncompliances worth investigating. Field and Program office colleagues make recommendations.**
- **OE staff meetings sort out relative importance of each matter that is a candidate for investigation.**
 - structured process for determining candidates for investigation
- **OE investigator is assigned the most consequential noncompliances and with input from the DOE Field and Program offices, determines a path forward.**

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Evaluation and Investigation of Potential Rule Violations (*cont'd*)

- **The decision is typically based on the following:**
 - The actual or potential safety significance
 - History of contractor noncompliances
 - Proactive actions by the contractor, including identification and reporting
 - Management involvement
 - Willful violation or falsification of material
- **Review of evidence supporting noncompliance may result in a recommendation for proceeding with full investigation or DOE may track to closure.**

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Examples for the Enforcement Process

➤ **Enforcement Process Question A:**

- A (DOE or Contractor) Coordinator, during routine review of ORPS, notices an adverse trend related to Safety Basis compliance. The adverse trend could be a programmatic or recurring problem. What actions should the Coordinator take?

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Evaluation and Investigation of Potential Rule Violations (*cont'd*)

- **Investigation of facts could lead to the following conclusions:**
 - There is a reasonable basis that the violation did occur and that enforcement action should be considered; or
 - Contractor actions were substantially proactive and the safety significance is low such that no enforcement action is required.

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Evaluation and Investigation of Potential Rule Violations (*cont'd*)

➤ **Notification of an Investigation**

- “Segregation of costs” letter sent by OE in compliance with the Major Fraud Act
- Usually includes document request
- NNSA package includes notification to the Administrator

➤ **Investigation can include the following:**

- Information gathered via telephone, e-mails, information request and document review
- Onsite review including worker and management interviews, document review, and first-hand examination of the area

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Examples for the Enforcement Process

➤ **Enforcement Process Question B:**

- OE plans to perform an onsite investigation at Contractor X and sends an interview list and schedule to the Contractor Coordinator. OE notifies the DOE Coordinator of this action. What actions should the Coordinators take?

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Evaluation and Investigation of Potential Rule Violations (*cont'd*)

- **PAAA Coordinator's Role – DOE and Contractor**
 - Focal point: collect information or coordinate the collection of noncompliance information
 - Assure that relevant information is distributed appropriately within the organization
 - Coordinate the identification of personnel for technical support when necessary to bring an issue to closure
 - Facilitate coordination and scheduling of onsite investigations

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Evaluation and Investigation of Potential Rule Violations (*cont'd*)

DOE PAAA Coordinator's Role – Additional Responsibilities

- **Serves as primary and first point of contact at the site or in the Program Office**
- **Determines consensus position within the Field/Program Office regarding the safety significance of the issue and the adequacy of corrective actions**
- **Reviews/comments on draft investigation summaries**

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Enforcement Conference

- **Held subsequent to issuance of investigation summary report**
- **Convened by OE for those cases in which further enforcement action is being considered**
- **Provides forum for contractor to respond to the investigation findings, provide its perspective on safety significance, and discuss potential mitigating factors**

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Enforcement Conference (*cont'd*)

- **Confirms or disputes facts and circumstances of the potential violations**
- **Contractor can waive an enforcement conference**

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Enforcement Conference (*cont'd*)

“Typical” contractor presentation–

- **Senior management introduction and perspectives and commitment to safety**
- **Discussion of investigation findings, causal analysis, general agreement or disagreement, safety perspectives, and any factual inaccuracies**

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Enforcement Conference (*cont'd*)

- **Status of corrective actions**
- **Potential areas of mitigation**
 - Self-identification and reporting
 - Timely and effective corrective actions
- **Closure by senior management**

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Enforcement Conference (*cont'd*)

- **Based on conference and post-conference DOE meeting, OE determines appropriate enforcement outcome with input from the DOE Field and Program Office**
- **The Director of Enforcement makes the final decision, except in NNSA matters when the Director makes recommendation to the Administrator**

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Examples for the Enforcement Process

➤ **Enforcement Process Question C:**

- OE notifies Contractor X of an Enforcement Conference.
The Enforcement Conference is held, and OE issues a PNOV to the contractor.
- 1. What actions should the coordinators take after the Notice of Scheduled Conference is issued?
- 2. What actions should the coordinators take in the event a PNOV is issued?

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Enforcement Conference (*cont'd*)

- **Contractor and DOE PAAA Coordinator's Role**
- **Actively participate in the dialogue between DOE and the contractor to ensure the following:**
 - The facts and technical issues surrounding the violation are documented and understood
 - The actual or potential adverse impact on safety is properly considered
 - The corrective actions that are proposed to rectify the violation are properly considered and are effective to address the root cause

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Post Conference DOE Only Meeting

- **DOE PAAA Coordinator's Role**
- **Provide input in determining the appropriate enforcement activities, including the following:**
 - Determination of severity level
 - Application of mitigation factors or escalation
 - Issuance of a Notice of Violation or Notice of Violation with Civil Penalty
 - Closure of the issue with no further enforcement action

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Post Conference DOE Only Meeting (*cont'd*)

Severity Levels (Nuclear Safety)

- **Level I - Violations involving actual or high potential for adverse impact on safety (most significant)**
- **Level II - Contractor lack of attention to responsibilities that could lead to adverse impact on safety**
- **Level III - Less serious violations but are of more than a minor concern**

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Post Conference DOE Only Meeting (*cont'd*)

Civil Penalties (Nuclear Safety)

- **Maximum of \$110,000 per violation per day**
- **Severity Level I – 100% (of maximum)**
- **Severity Level II – 50%**
- **Severity Level III – 10%**

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Post Conference DOE Only Meeting (*cont'd*)

Severity Levels (Worker Safety)

- **Level I - Violations involving potential for death or serious physical harm**
- **Level II - Other – most serious potential injury or harm could not reasonably be predicted to cause death or serious physical harm, but is directly related to safety and health**
- **De Minimis - Not enforceable – a deviation from a requirement**

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Post Conference DOE Only Meeting (*cont'd*)

Civil Penalties (Worker Safety)

- **Maximum of \$70,000 per violation per day**
- **Severity Level I - 100% of maximum**
- **Severity Level II – 50% of maximum**

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Post Conference DOE Only Meeting (*cont'd*)

The Worker Safety Parallel Regulatory Universe

- **Director authorized to seek contract fee reductions in lieu of civil penalties**
- **Statute authorizes contract penalties up to amount of annual fee collected by contractor**

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Post Conference DOE Only Meeting (*cont'd*)

- **Severity Level determination considers the following:**
 - Actual or potential impact on safety (primary consideration)
 - Culpability of contractor
 - Duration of violation
 - History of similar violations
 - Isolated or multiple occurrences
 - Position, training and experience of individual(s) involved
 - Prior notice of potential problem
 - Willful violations
 - Other contributing factors

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Post Conference DOE Only Meeting (*cont'd*)

Less Significant Violations –

- **Isolated minor violations will not result in issuance of a Notice of Violation**
- **Violations can be evaluated in the aggregate and a single (higher) severity level assigned**

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Post Conference DOE Only Meeting (*cont'd*)

Application of Mitigation/Escalation Factors –

- **Prompt identification and reporting by contractor
(up to 50% decrease)**
- **Timeliness and effectiveness of corrective actions
(can decrease or increase up to 50%)**

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NNSA Process Differences

- **Specific protocols were established in EH/NNSA MOU of January 2001.**
- **OE issues an investigation notification memo to the NNSA Administrator.**
- **OE subsequently notifies local NNSA office and then the site contractor.**

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NNSA Process Differences (*cont'd*)

- **OE recommends enforcement action to NNSA Administrator.**
- **NNSA Administrator has signature authority on enforcement actions.**
- **We expect this process to work the same way for Worker Safety as it works for Nuclear Safety**

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Part 708 Process Differences

- **Decisions rely on hearing records already created, including law judge opinions developed at the DOE Office of Hearings and Appeals or the Department of Labor.**
- **Contractor is given the opportunity to supplement the record.**
- **Since the documents and testimony speak for themselves, enforcement conferences are generally be unnecessary.**

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Enforcement Outcome

- **Preliminary Notices of Violation**
- **Enforcement Letters**
- **Special Report Orders**
- **Consent Orders**
- **Compliance Orders**

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PNOV/FNOV

- **Director issues Preliminary Notice of Violation (except NNSA)**
- **Contractor accepts violations in PNOV**
 - Can accept as written and pay civil penalty (if imposed)
 - Can accept, but request further mitigation
 - PNOV becomes a Final Order without further action

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PNOV/FNOV (*cont'd*)

➤ **Contractor contests all or part of PNOV**

- OE can accept the basis, modify PNOV as appropriate and issue a Final Notice of Violation or
- OE can reject the basis and issue a Final Notice of Violation (FNOV)
- Process, based on 10 CFR 820, should function the same way for Worker Safety as for Nuclear Safety

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PNOV/FNOV (*cont'd*)

- **Contractor options after receiving FNOV**
 - Accept and pay civil penalties
 - Request adjudication when civil penalties are imposed

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Enforcement Letters

- **Not considered an enforcement action**
- **Used to communicate OE view on noncompliance matters, both positive and negative**
- **Intended to direct contractors to the desired level of safety performance**
- **Signed and issued by the OE Director**

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Special Report Order

- **Not considered an enforcement action**
- **Requires the submission of information relating to a DOE Nuclear Safety or Worker Safety requirement**
- **Utilized when contractors are less than fully cooperative in an investigation**
- **Signed by the OE Director or NNSA Administrator**

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Consent Order

- **Considered a remedy in lieu of an enforcement action**
- **Authorized by 10 CFR 820.23**
- **Contractor must meet criteria in Enforcement Guidance Supplement 03-01 to be a candidate:**
 - Confidence in contractor built over time
 - Timely and comprehensive corrective action program
 - History of assessment based problem identification
 - Likely to be addressed in a similar manner on Worker Safety issues as it has worked for Nuclear Safety issues

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Consent Order (*cont'd*)

- **Documents the terms of a settlement between DOE and the contractor relating to an enforcement proceeding**
- **Signed and issued by the OE Director**

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Compliance Order

- **Authorized by 10 CFR 820, Subpart C**
- **Issued by the Secretary of Energy**
- **Identifies and mandates a remedy for a situation violating or potentially violating the Act or a DOE Nuclear Safety requirement**
- **Constitutes an additional Price-Anderson violation for failure to comply**

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Enforcement Actions Monitoring/Closure

Important:

Failure to implement corrective actions can result in additional enforcement action

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Summary

The PAAA Coordinator plays a pivotal role during all steps of the enforcement process

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